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| DEC 27 2023 | |
| CLERK U S DISTRICT COURT DISTRICT OF ARIZONA | |
| BY _____ | DEPUTY |

Abby Harbour
abby.ku07@yahoo.com
15527 East Palatial Drive
Fountain Hills, Arizona 85268
480-717-1984
Claimant
In Propria Persona

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,
Plaintiff,

vs.

David Allen Harbour,
Defendant.

Case No. 2:19-cr-00898-DLR

**ABBY HARBOUR'S AMENDED
VERIFIED CLAIM**

I am Abby Harbour. I have been married to the Defendant since 2010. We have no prenuptial agreement in place. I have reviewed the Preliminary Order of Forfeiture, Doc. 801, filed 11-6-2023, and also the Plaintiff's Motion to Amend the Order of Forfeiture, Doc. 805, dated 11-27-2023 (collectively, "Forfeiture Contentions")

I claim all the items listed in the two documents. Three bases exist for my claims:

1) The items listed below with asterisks (*) were gifts to me by my husband and, as such, are my sole and separate property and are not subject to forfeiture, 2) alternatively, they, along with the items not marked with an asterisk (*) are community property under Arizona law and, as such, are not forfeitable. The coins were gifts to my children from my parents (the Gottschalks') and are exempt from forfeiture (10 Silver Dollars in

American Eagle Collector Boxes) under, *inter alia*, the Uniform Gift to Minors Act and by the fact that they belong to my children.

Claimed Items

1. 18 Karat White Gold Diamond Cuff Bracelet (Tr. Ex. 887)*
2. 18 Karat Yellow and White Gold Custom Kansas University Jayhawk Pendant and Cable Chain (Tr. Ex. 888)*
3. Scott Kay Engraved Platinum Classic Band Stamped (Tr. Ex. 889)*
4. Hamra Jewelers Engraved Custom Platinum Diamond Ring (Tr. Ex. 890)*
5. Patek Philippe Stainless Steel Nautilus Watch and Steel Bracelet with Serial Number A384EAP (Tr. Ex. 891)
6. Engraved Custom Platinum Eternity Band (Tr. Ex. 892)*
7. Rolex Day-Date Pearlmaster Watch with Serial Number G527156 and Masterpiece Bracelet (Tr. Ex. 893)*
8. \$3,000 Cash
9. Paradise Valley Country Club Equity in the amount of \$12,437.42
10. Whisper Rock Golf Club Membership in the amount of \$52,819.77.
11. Cartier Pasha Seatimer Chronograph Watch with Serial Number 604011MX and Black Rubber Bracelet;
12. 18 Karat White Gold Diamond Cuff Bracelet (may be repeat);*
13. Stud Earrings;*
14. Three ASU Championship Rings
15. Chanel Watch with Serial Number W.K.80418;*
16. Ring with Pink Stone;*
17. Stainless Navitimer Gents Breitling Watch with Serial Number 422425
18. Polished Navitimer Heritage Bracelet.*

Justification

Federal laws governing criminal forfeiture do not contemplate seizure of an innocent spouse property to satisfy the offending spouse forfeiture obligation. *U.S. v Chavez* 323 F.3d 1216 (9th Cir.2003); *U.S. v Lester* 85 F.3d 1409 (9th Cir. 1996) the property of an innocent spouse cannot be forfeited. (Arizona case); *see also*; *U.S. v Wolfe* 375 Supp 3d 428 (S.D.N.Y. 2019). In *Wolfe*, which involved an innocent spouse seeking avoidance of forfeiture, the Court noted that the government cannot use property of an innocent spouse as substitute property. There, the Defendant and his wife lived in New York and had property in North Carolina and Arizona. Under the community property laws of Arizona the government was not allowed to use substitute property in which the wife held an interest.

Here, the jewelry was proved to have all been purchased with money from Canyon Road (\$6.6 million). The FTC Receiver Larry Cook testified that Harbour was not accused of any wrong doing or fraud with respect to Canyon Road. The FTC did not believe they had probable cause to charge David with any fraud. Even if the money came from KSQ, Agent Green testified when he audited Harbour he did not connect any money KSQ sent to Harbour to lenders money. Agent Green testified he could not trace any money KSQ sent Harbour to the 25% Finder's Fee Agreement. Agent Paige testified she could not trace any money KSQ sent Harbour to the 25% Finder's Fee Agreement.

Case law from the 9th Circuit and the Supreme Court has ruled it is not mail or wire fraud if the "kick-backs" or commissions did not come from the victims money. *see U.S. v Lew* 875 F.2d 219 (9th Circuit 1989) and *McNally v U.S.* 483 US 350 (U.S. 1987).

1 The evidence from the trial record was that no money came from the lenders. It came
2 from KSQ and Agent Paige testified she did not know where the money came from the
3 KSQ used to pay Harbour.

4 Finally, AUSA Rapp admitted no money was traced to any lender or victim's
5 money to purchase and assets. (Hr, 7/26/23, pg.77)

6 RESPECTFULLY SUBMITTED this ____ day of December 2023.

7 I, Abby Harbour, am of lawful age and I make this verified claim under penalty of
8 perjury.

9 By: _____
10 Abby Harbour

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on December ____, 2023,
13 I mailed the attached document to:

14 Joseph Bozdech
15 Joseph.bozdech@usdoj.com
16 Assistant United States Attorney
17 Two Renaissance Square
18 40 N. Central Avenue, Suite 1800
Phoenix, AZ 85004-4408
Attorney for Plaintiff

19 Kevin M. Rapp
20 Kevin.rapp@usdoj.gov
21 U.S. Attorney's Office
22 Two Renaissance Square
23 40 N. Central Avenue, Suite 1800
Phoenix, AZ 85004-4408
Attorney for Plaintiff

24 Stephen M. Dichter
25 sdichter@cdslawfirm.com
26 Christian Dichter & Sluga, P.C.
27 2800 North Central Avenue, Suite 860
Phoenix, AZ 85004
Attorney for Defendant

1 Abby Harbour
2 Claimant
3 *In propria persona* _____
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9 Abby Harbour

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Assistant 16 United States Attorney
Two 17 Renaissance Square
40 N. 18 Central Avenue, Suite 1800
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Stephen 26 M. Dichter
27 sdichter@cdslawfirm.com
Christian 28 Dichter & Sluga, P.C.

2800 North Central Avenue, Suite 860
Phoenix, AZ 85004
Attorney for Defendant

Abby
Claimant
In propria

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Attorney

Harbour

persona